

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES SPRATT,

Plaintiff,

No. 17-12350

v.

District Judge Laurie J. Michelson
Magistrate Judge R. Steven Whalen

MONEY RECOVERY NATION
WIDE, ET AL.,

Defendants.

ORDER GRANTING MOTION TO SET ASIDE DEFAULT

On January 10, 2019, the Clerk of the Court entered a default against Defendant Money Recovery Nationwide, now known as Receivables Management Partners, LLC (“RMP”) following merger [Dkt. #27]. Before the Court is RMP’s motion to set aside the default [Dkt. #31].

I. BACKGROUND

In response to a previous show cause order, Plaintiff stated that he properly served RMP by serving a summons on one Ron Kochanski. This is reflected in the return of service [Dkt. #8].

Attached to the motion as Exhibit A is the affidavit of Jennifer Isabell, a litigation specialist and privacy officer for Receivables Management Partners, LLC, successor by merger to Nationwide Collection Agency, Inc., d/b/a Money Recovery Nationwide. Ms.

Isabell states that Ron Kochanski is neither a resident agent nor an officer of RMP.

Rather, the resident agent for RMP on or about August 11, 2017 was CSC-Lawyers Incorporating Service. *Isabell Affidavit*, paragraphs 2-15. Ms. Isabell further states that RMP has no record of being served with any pleadings in this case, including Plaintiff's amended complaints. *Id.* paragraphs 6-7.

Plaintiff has not filed a response to Defendant's motion.

II. STANDARD OF REVIEW

A motion to set aside a default is governed by Fed.R. Civ.P. 55(c). That Rule sets forth a relatively relaxed "good cause" standard for setting aside a Clerk's entry of default. *U.S. v. \$22,050.00 U.S. Currency*, 595 F.3d 318, 324 (6th Cir. 2010). In *O.J. Distrib., Inc. v. Hornell Brewing Co.*, 340 F.3d 345, 353 (6th Cir.2003), the Sixth Circuit described the Rule 55(c) standard as follows:

"[T]he district court enjoys considerable latitude under the "good cause shown" standard of Rule 55(c) to grant a defendant relief from a default entry. The criteria used to determine whether "good cause" has been shown for purposes of granting a motion under Rule 55(c) are whether (1) the default was willful, (2) set-aside would prejudice plaintiff, and (3) the alleged defense was meritorious. It has been found that a district court abuses its discretion in denying a motion to set aside an entry of default when two of the three factors have been demonstrated by the defendant: the defendant had a meritorious defense and no prejudice would result to the plaintiff if the matter were to go forward." (internal quotation marks, citations, and footnote omitted.).

A court reviewing a Rule 55(c) motion should be "extremely forgiving to the defaulted party and favor a policy of resolving cases on the merits instead of on the basis

of procedural missteps.” *United States v. \$22,050.00 U.S. Currency*, *supra*, 595 F.3d at 322.

III. DISCUSSION

Plaintiff has not filed a response to this motion, and has thus not offered any contradiction to Ms. Isabell’s sworn statements that Ron Kochanski is not a resident agent authorized to accept service, and that Defendant in fact was never properly served. I therefore find that the alleged default was not willful. Nor would setting aside the default prejudice the Plaintiff. And finally, Ms. Isabell’s affidavit shows that Defendant RMP has a meritorious defense.¹ Apart from any assessment of the merits, the complaint is also subject to dismissal for failure to serve. *See* Fed.R.Civ.P. 4(m).

IV. CONCLUSION

Therefore, Defendant’s motion to set aside default [Dkt. #31] is GRANTED, and the Clerk’s entry of default [Dkt. #27] is VACATED.

IT IS SO ORDERED.

s/R. Steven Whalen

R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: June 10, 2019

¹ A defense is meritorious if “there is *some possibility* that the outcome of the suit after a full trial will be contrary to the result achieved by the default.” *Williams v. Meyer*, 346 F.3d 607, 614 (6th Cir. 2003)(internal quotations and citations omitted) (emphasis in original). Further, “[i]f a defense is ‘good at law,’ regardless of the likelihood of success, it will be considered meritorious.” *Burrell v. Henderson*, *supra*, 434 F.3d 826, 834 (6th Cir. 2006).

CERTIFICATE OF SERVICE

I hereby certify on June 10, 2019, I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on June 10, 2019: **None**

s/Carolyn Ciesla

Case Manager to

Magistrate Judge R. Steven Whalen